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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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FILE: [redacted] Office: LOS ANGELES Date: JUL 31 2009
MSC 06 101 12021

IN RE: Applicant: [redacted]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C § 1255a.

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.,* CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, or *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.,* CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004, (CSS/Newman Settlement Agreements) was denied by the Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through the date of attempted filing during the original one-year application period that ended on May 4, 1988.

On appeal, the applicant asserts that he has submitted evidence to establish his eligibility for Temporary Resident Status. The applicant submits additional evidence on appeal.

An applicant for temporary resident status – under section 245A of the Immigration and Nationality Act (the Act) – must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. *See* section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. *See s*ection 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. *See* 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. *See* CSS Settlement Agreement, paragraph 11 at page 6; Newman Settlement Agreement, paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the

quantity of evidence alone but by its quality." *Id.* at 80. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The applicant is a native of Guatemala who claims to have resided in the United States since November 1981, and he filed an application for temporary resident status under section 245A of the Act (Form I-687), together with a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, on January 8, 2006.

In the Notice of Decision, dated March 26, 2007, the director denied the instant application as the applicant had failed to establish the requisite continuous residence. The director noted that the evidence provided lacked essential details, and did not establish the applicant's residence during the requisite period.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status from before January 1, 1982 through the date he attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. After reviewing the entire record, the AAO determines that he has not.

On appeal, the applicant states that the director did not give him an opportunity to provide evidence to establish his eligibility. The record reflects, however, that the director issued a Form G-56 notice, dated September 26, 2006, requesting that the applicant attend an interview on November 1, 2006; and, that the applicant submit evidence to establish his eligibility, including his continuous residence during the requisite period. **The notice was mailed to the applicant's address of record,** [redacted]

[redacted], Los Angeles, CA 90004, and was not returned as undeliverable. It is noted that the applicant attended the scheduled interview, but there is no indication in the record that the applicant complied with the director's request. It is also noted that, on appeal, the applicant has provided additional evidence, including affidavits and letters. The AAO will, therefore, deem the record complete and consider and evaluate the entire record as constituted.

The evidence provided by the applicant consists of the following:

Employment Letters

The applicant submitted a letter of employment, from [redacted], of Windsor Gardens Convalescent Hospital, stating that the applicant had been employed from August 28, 1988. [redacted] also states that the applicant listed on his employment application that he had been employed by Riverdale Convalescent from September 1987 to February 1989, and by [redacted] from February 1989 to July 1989.

The letter is not probative, however, as the employment with Windsor Gardens Convalescent Hospital does not pertain to the requisite period. It is noted that the letter failed to provide the applicant's address at the time of employment. Also, the letter failed to show periods of layoff, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable as required under 8 C.F.R. § 245a.2(d)(3)(i). In addition, the prior employment listed in the letter from Windsor Gardens Convalescent Hospital does not cover the remainder of the requisite period, and there is no evidence of verification of such employment.

Affidavits and letters

1) An affidavit from [redacted], attesting to having known the applicant since February 1985. The affiant also attests that the applicant traveled to Guatemala to visit his mother after the applicant's father died in 1986; and the applicant informed her that he came to the United States in 1980. The affiant, however, does not indicate how she dates her acquaintance with the applicant, whether and how frequently she had contact with the applicant, nor does she attest to the applicant's continuous residence since her acquaintance with him, or during any other period from prior to January 1, 1982.

2) An affidavit from [redacted] attesting that he has known the applicant to have resided in the United States since February 1980 when the applicant resided at his mother's home. The applicant lists addresses where the applicant resided from February 1980 through July 1989, and attests that he and the applicant have been friends since they became acquainted. The affiant, however, does not provide details, such as to indicate how he maintained contact, if any, with the applicant during that time.

3) An affidavit from [redacted], attesting to having known the applicant since 1986. The affiant also attests that she was introduced to the applicant by her sister while she lived in Los Angeles, and that the applicant visited his mother in June 1987. The affiant,

however, does not indicate how she dates her acquaintance with the applicant, whether and how frequently she had contact with the applicant, nor does she attest to the applicant's continuous residence since her acquaintance with him, or during any other period from prior to January 1, 1982.

4) An affidavit from [redacted], attesting that he first became acquainted with the applicant in May 1986. [redacted] also attests that she has known the applicant to have resided in the United States since 1980 because the applicant showed pictures of himself prior to 1982; and, that she and the applicant had dinner several times and went to clubs, and went to barbeques on weekends. The affiant, however, does not provide details, such as how frequently she had contact with the applicant, and how she was able to discern that through the photos the applicant showed that he had been in the United States since prior to 1982.

5) Two letters from stating that she has known the applicant since 1980, and that they have been friends ever since. The affiant also attests to the applicant's character. [redacted] however, does not indicate how she dates her acquaintance with the applicant, whether and how frequently she had contact with the applicant, and does attest to the applicant's continuous residence in the United States since her acquaintance with him.

Contrary to his assertion, the applicant has failed to submit sufficient evidence to establish his continuous residence. As noted above, the affidavits and letters provided lack essential details. As **such, the evidence provided is insufficient to establish the requisite continuous residence.** The applicant has not submitted any additional evidence in support of his claim that he entered the United States prior to January 1, 1982, and he had resided continuously in the United States during the entire requisite period.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that his continuous unlawful residence in the United States throughout the requisite period. Thus, the record does not establish that the applicant entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from that date through the date he attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A(a)(2) the Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.